by [these] Consent Decree[s]." Section 251(g) simply ensured that these incumbent LECs would remain bound by a subset of those obligations – *i.e.*, their pre-existing equal access and non-discrimination obligations to IXCs and ISPs – until the Commission adopted superseding regulations under the 1996 Act to replace the consent decree obligations. As the Commission recently concluded, "[Section 251(g)] is merely a continuation of the equal access and nondiscrimination provisions of the Consent Decree until superseded by subsequent regulations of the Commission." *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 15 FCC Rcd. 385, ¶ 47 (December 23, 1999) (*"DSL Remand Order"), vacated in part on other grounds, WorldCom, Inc. v. FCC,* 246 F.3d 690 (D.C. Cir. 2001). The legislative history of Section 251(g) confirms this reading: "Because the [1996 Act] completely eliminates the prospective effect of the [Consent Decrees], some provision is necessary to keep these requirements in place . . . . Accordingly, the conference agreement includes a new section 251(g)." H.R. Rep. 104-458, at 123, *reprinted in* 1996 U.S.C.C.A.N. 124, 134 (1996).

Until the *ISP Remand Order,* the Commission had consistently recognized that Section 251(g) does not broadly "carve out" traffic that otherwise would be subject to the other requirements of Section 251. The Commission concluded, for example, that Section 251(g) did not preserve the unbundling requirements of Section 251(c) from applying to "exchange access" even though "exchange access" is included in Section 251(g). *Local Competition Order* ¶ 362. The Commission explained that, as applied to IXCs, "the primary purpose of Section 251(g) is to provide the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent." *Id*

The Commission's fundamental misinterpretation of Section 251(g) is confirmed by its failure to reconcile its conclusion with the plain language of that provision. First, Section 251(g), by its terms preserves only obligations "that apply . . . on the date immediately preceding [the date of enactment] February 8, 1996 [of the Act]." 47 U.S.C. § 251(g). **As** the Commission conceded in the 1999 *Declaratory Ruling*, it had no pre-existing "rule governing inter-carrier compensation for ISP-bound traffic." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, 14 FCC Rcd. 3689, ¶ 9; *id.* ¶ 22 (February 26, 1999) ("Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic").[33] *See also Bell Atlantic v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000) ("for the nonce [the Commission] left open the matter of implementing a system of federal controls").

Second, reciprocal compensation obligations govern the allocation of costs and revenues between LECs. Section 251(g) does not address obligations or compensation between LECs. Rather, it states that "*each local exchange carrier* . . . shall provide exchange access, information access, and exchange services for such access to *interexchange curriers and information service providers* in accordance with the same . . . restrictions and obligations . . . that applied to such carrier on the date immediately preceding [the date of enactment of the Act]." 47 U.S.C. § 251(g) (emphasis added). That is, Congress sought to avoid a flash-cut that

[33] The Commission suggests that Section 251(g) exempts the services enumerated in section 251(g) "from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or *future regulations prescribed by the Commission." ISP Remand Order* ¶ 36 (emphasis added). But section 251(g) is very precise in stating that it grandfathers only those "restrictions and obligations" that applied "on the date immediately preceding February 8, 1996, not "fbture regulations prescribed by Congress." *See Local Competition Order* ¶ 362 ("the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from the incumbent").

would create significant dislocations with respect to LEC-IXC and LEC-ISP relationships; neither the consent decrees that were terminated by the Act nor Congress' Section 251(g) efforts to preserve equal access and nondiscrimination obligations that would otherwise have been terminated with those decrees has anything to do with LEC-LEC relationships.

Third, the Supreme Court has explained that Section 251(g) is "not [a] gran[t] of authority at all." *AT&T v. Iowa Utils.*, 525 **U.S.** 366, 383 n.9 (1999). The Commission ignores that binding precedent to conclude that Section 251(g) "grant[s]" it "authority to supersede existing regulations." *ISP Remand Order* ¶ 50.

Finally, even if the Commission had authority to treat ISP-bound traffic differently from other traffic subject to Section 251(b)(5), it would make no sense to do so, because the Commission's existing reciprocal compensation standards are both efficient and competitively neutral as applied to ISP-bound traffic. As the Commission has acknowledged, after years of hotly contested proceedings on the issue, the record "fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an **ISP."** *ISP Remand Order* ¶ 90.[34] And the Commission itself has explained that the rates for transport and termination should "converge" where such functions "involv[e] the same network functions." *Local Competition Order* ¶ 1033. There is simply no economic justification for subjecting voice and data traffic to different compensation rules because the costs of transporting and terminating data traffic do not differ categorically from the costs associated with transporting and terminating voice traffic – LECs use the same networks in the same manner to deliver ISP-bound traffic as they do to deliver other voice and data traffic.

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34 It was for precisely this reason that the Commission imposed a "mirroring" requirement in the *ISP Remand Order*.

V. B&K WOULD CLEARLY BE INAPPROPRIATE IN THE CONTEXT OF INTERSTATE ACCESS CHARGES.

Although the Commission purports to be considering adoption of an appropriate "unified" intercarrier compensation regime, the *Notice* virtually ignores interstate access charges. The *Notice* devotes a single paragraph to issues raised by application of B&K to interstate access charges, *Notice* ¶ 97, notwithstanding that access charges are the intercarrier compensation charges that *most* exceed the relevant costs and the reform of which would therefore provide the *greatest* public interest benefits.[35] The Commission readily admits that it does not "anticipate implementing major changes to our access charge rules in the initial phase of this proceeding." ***Id.*** Rather, the Commission will now "begin" to "explore" the "possible application" of B&K to LEC-IXC interconnection in an attempt to answer the question "What comes after CALLS [in 2005]?" ***Id.*** Thus, the Commission is not considering a "unified" system at all. To the contrary, it is considering piecemeal changes that systematically favor incumbent LECs: *i.e.*, the payments that incumbent LECs make to other carriers (reciprocal compensation) are proposed to be immediately transitioned toward bill-and-keep, but the above-cost payments other carriers pay to incumbents (access charges) are proposed to be retained indefinitely.

Such a piecemeal, reverse triage approach to intercarrier compensation arrangements would be manifestly contrary to the public interest. Replacing today's "unified" CPNP regime with a melange of CPNP and B&K applied in different contexts would only *increase* the extent to which different types of carriers are arbitrarily subjected to disparate regulatory treatment. Worst yet, the particular disparate rules and transitions proposed in the *Notice* would provide an unjustified regulatory windfall for incumbent LECs, and thereby,

[35] AT&T notes that its records indicate that the access charges for local switching range from a high of nearly 20 cents per minute to a low of a little over one-tenth of a cent per minute.

directly harm consumers and competition. As Professors Ordover and Willig emphasize (¶ 17), "the Commission must take great care to ensure that the reforms undertaken in this proceeding actually produce a single, unified approach that recognizes that the costs associated with delivering traffic do not turn on the identity or status of the originating or terminating carrier or of the calling or called party, and that regulatory transitions are handled in a nondiscriminatory and competitively neutral fashion that does not have the distortionary effect of picking winners (and creating losers)."

The Commission should not partially implement any new "unified" intercarrier compensation system until it has fully explored whether the new unified system would make sense for *all* services. The Commission has already made this mistake once. In the *ISP Remand Order,* the Commission adopted rates for reciprocal compensation for ISP-bound traffic designed to transition to a B&K system without determining whether this approach was efficient or even lawful. In the *Notice* the Commission again proposes to address ISP-bound traffic while leaving compensation schemes for the transport and termination of other traffic untouched, which would again jump the gun on the threshold question of the appropriate "unified" scheme.

And it is clear from even the most cursory analysis that B&K would be unworkable in the access charge context. B&K would seriously undermine competitive long distance markets by providing incumbent LECs with an increased ability to degrade the quality of access services. And, as noted above, B&K would also cause radical changes in retail long distance pricing

A. B&K For Interexchange Access Services Would Harm Competition And Consumers.

Degradation of Long Distance Quality and Competition. CPNP allows IXCs to maintain greater control over the end-to-end quality of long distance calls than would a B&K

rule. **As** explained above, IXCs today control what transport trunks they will order and use, which allows the IXC to maintain network efficiency and call quality. Adoption of B&K would give incumbent LECs unilateral control over such decisions on the originating end, thus dramatically increasing incumbent LECs' ability to degrade the quality of their long distance competitors' calls through the sizing of transport trunks and other means. *See Ordover-Willig Declaration* ¶ *60.* For these reasons, a B&K approach to access charges would be profoundly anticompetitive.

The COBAK default rule would cause additional distortions in the interexchange market. See *id.* ¶¶ 57-59. Under today's arrangements, an IXC and a LEC hand off both originating and terminating traffic at the POP, typically using two-directional trunk groups, sized, ordered and paid for by the IXC. Under DeGraba's default rule, however, the LEC would hand off originating traffic at the POP but the IXC would be obligated to deliver its terminating traffic at each LEC central office. If the IXC is responsible for delivering traffic to the point of interface designated as the LEC end-office switch, it may not have sufficient terminating-only traffic to economically justify direct trunks. Under current rules, CLECs are permitted to interconnect with the ILEC using direct trunks that are usually engineered to carry two-way traffic so they can be used more efficiently than if only designed for one-way traffic. In addition, under current rules, transport arrangements include an access tandem option used when traffic volumes do not justify direct trunks, or for handling over-flow traffic. By mandating delivery to each LEC end office, the COBAK default rule (which, again, would become the *de facto* mandatory rule, because incumbent LECs would have no incentive to negotiate a different arrangement) would further increase incumbent LECs' incentives to use pricing flexibility to raise rivals costs for tandem switched and other transport options.

Pricing. The CPNP model allows IXCs to retain end-to-end control over the pricing of long distance services. The alternative under B&K would be to split long distance charges across three carriers: the caller would pay her LEC for originating access and her IXC for intercity transport, and the called party would pay its LEC for terminating access. Such tripartite charges would substantially increase customer confusion. Consumers should not have to add up charges across carriers (and the calling and called parties) to determine the price of a long distance call. Charges for long distance calls would vary from customer to customer and from call to call, reflecting the wide variations among LEC access charges, which for local switching, for example, range from less than one-tenth of one cent per minute to nearly twenty cents per minute. AT&T supports direct Commission action to relax the rigid averaging requirements that are applied today only to IXCs, and that harshly impact long distance carriers that seek to serve the entire nation. But, given its other shortcomings, B&K, which would allow the LECs to deaverage completely the access components of long distance service is not the best way to address that problem. Rather, as discussed below, the Commission should act promptly to ameliorate the anticompetitive impact of the rate averaging requirement **by** reducing rural carriers' access rates to price cap levels, making appropriate adjustments to the universal service fund (and taking targeted action to relax rate averaging requirements where additional reform is needed to level the competitive playing field).

Finally, contrary to the Commission's supposition ***(Notice*** ¶ 45), B&K would not eliminate incumbent LECs' ability to execute price squeezes. **As** Professors Ordover and Willig explain (¶ 54), "[i]f the above-cost access charges IXCs currently pay were simply transformed into end user charges, nothing would alter the basic economics that currently allow LECs to price squeeze." The incumbent LEC could still offer above-cost access charges to its end-users, although that LEC would continue to obtain its own access at economic cost. **As** a result, the incumbent LEC would have the unique ability to offer a "bundled' price for long distance that reflected its economic costs rather than the inflated costs that customers of other IXCs would have to pay.

Even if end-user access charges under a B&K system were properly rate regulated to avoid such discrimination, however, LECs would still have an increased ability to design rate schemes that disadvantaged non-affiliated IXCs. For example, under a B&K system, IXCs would be limited to offering intercity transport services. Since the IXC would have control over only the intercity transport component of long distance pricing, it could not necessarily offer customers the simple pricing plans available today (*e.g.*, 7 cents per minute, 24 hours a day). Incumbent LECs could refuse to offer a **24** hour a day flat rate for access, for example, which would effectively prevent unaffiliated IXCs from offering a long distance service in which customers pay the same rate no matter when they call. Incumbent LECs, by contrast, would be uniquely able to offer bundled packages with simplified rates. See ***Ordover-Willig* ¶ *59.***

B. The Commission Should Continue to Drive Interstate Access Charges Toward Forward-Looking, Economic Costs.

As competition continues to develop, it is vitally important that regulatory disparities in the treatment of local and interexchange minutes be eliminated and that all intercarrier compensation be set on the basis of forward-looking economic cost. The Commission has already taken the first steps to set into motion the proper recovery of interstate loop costs in the CALLS Plan. In the *CALLS* ***Order,*** the Commission largely eliminated carrier loop charges for price cap LECs and increased the caps on the Subscriber Line Charges ("SLCs"). *Id.* **¶¶ 76-88.** As the Commission found, these changes are consistent with sound principles of cost causation and "establish[] a straightforward, economically rational pricing structure which enables consumers to make a choice among competing providers . . . [and] send[s] potential entrants economically correct entry incentives." *Id.* ¶¶ 78-80. The Commission should immediately adopt similar changes for rate-of-return LECs.[36]

The Commission should not stop there, however. Rather, it should initiate proceedings that will ultimately establish forward-looking, economic cost-based price caps for interstate switching and transport services. Although the Commission has reduced price caps for interstate access since 1996, virtually ***all*** reductions in access charges during that time have been the result of Commission action. Competitive entry has failed to reduce access charges, contrary to the Commission's hope in the ***Access Reform Order.*** This failure is increasingly intolerable, because as the ***Notice*** acknowledges, above-cost access charges continue to invite various forms of regulatory arbitrage that are distorting the development of competition at a critically important period of time

Forward-looking, economic cost-based caps should also be set for the terminating access rates of competitive LECs. Indeed, the Commission has already established a basic framework in which TELRIC could be applied to competitive LECs' terminating charges. In its recent *CLEC* ***Access Order,*** the Commission established mandatory detariffing of competitive LEC access rates above a certain threshold.[37] Rates below the threshold may be tariffed and are

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[36] ***See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,*** CC Docket ***No.*** 00-256, Notice of Proposed Rulemaking, FCC 00-448 (Jan. 5, 2001).

[37] **As** reflected in the Commission's *CLEC* ***Access Order,*** it is reasonable to treat incumbent LEC rates as a benchmark, subject to rebuttal, in order to "permit[ ] a simple determination of whether a CLEC's access rates are just and reasonable." As the Commission acknowledged, the careful deliberation given to determining incumbent LEC rates "has yielded presumptively just and reasonable access rates." *Id.* ¶ 41. Using the incumbent LEC rates as a presumptively correct benchmark "is particularly desirable given the current legal and practical difficulties involved with comparing CLEC rates to any objective standard of 'reasonableness."' *Id.*

presumed just and reasonable; rates above the threshold must be negotiated, and during the pendency of negotiations or if the parties cannot agree, the competitive LEC must charge the benchmark rate. *CLEC Access Order* ¶¶ 40-44. The Commission can retain this basic framework, and eliminate all harmful arbitrage opportunities by setting the benchmark at the incumbent LEC's TELIUC-based rate.

Finally, an additional adjustment should be made in the context of "high-cost" rate-of-return LECs. Even if rate-of-return LEC access charges were properly set on the basis of forward-looking, economic costs, their access charge rates could be significantly higher than those of price cap LECs. Section 254(g), however, requires IXCs to set long distance rates that reflect the average of lower price cap LEC rates and much higher rate-of-return LEC rates. Because of this distortion, the access charges for rate-of-return LECs should be capped at the comparable price cap LEC rate with the residual revenue requirement covered by the universal service fund.[38]

VI. THE COMMISSION SHOULD NOT IMPORT THE MASSIVE DISTORTIONS CAUSED BY BLOATED ACCESS CHARGES TO THE IXC-CMRS CONTEXT.

CMRS-IXC interconnection is the one context in which industrywide voluntary B&K arrangements have developed and proven sustainable. There are many reasons – which AT&T will address in more detail in a pending Commission proceeding devoted to this issue[39] –

[38] *See* AT&T Comments on MAG NPRM, *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (February 26, 2001); At&T FNPRM Comments On Joint Board Rural Task Force Recommended Decision, *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 (February 26, 2001).

[39] As the Commission may be aware, the Western District of Missouri has recently referred a case, *Sprint PCS* v. *AT&T Corp.*, Civil Action No. 4-00-00973-HFS, to the Commission, in which Sprint PCS is seeking access charges from AT&T, despite the lack of any agreement with (continued...)

why it would not be appropriate to displace unregulated IXC-CMRS B&K arrangements with a regulated access charge regime.[40] To begin with, CMRS end-user markets, unlike wireline local markets, are competitive, and the negative externalities associated with unwanted calls that make B&K inefficient in the wireline context are muted in the wireless context, given legal restrictions on uninvited solicitation. *Ordover-Willig* ¶ 37 n. 11. Moreover, the myriad problems that would be associated with any rule displacing existing IXC-CMRS arrangements with a regulated access charge regime would only be multiplied given today's bloated access charge levels. *Id.*[41]

(. . . continued)
AT&T to pay those charges. Notably, Sprint's pleadings are devoid of any acknowledgement of the fact that it, like other wireless carriers, already charges its users for the costs associated with termination.

[40] The Commission has consistently exercised its forbearance authority with respect to CMRS rates. *See, e.g.*, *In the Matter of Wireless Consumers Alliance, Inc.*, 15 FCC Rcd. 17021, ¶ **18** (2000) ("In the case of CMRS there are no longer any 'filed rates.' . . . CMRS carriers are not only exempt from filing tariffs, they are also prohibited from filing tariffs with the Commission',) (August 14, 2000); *In the Matter of Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services,* FCC 01-153, ¶ 60 (rel. May 17, 2001) ("Because of the competitive wireless environment, however, CMRS licensees are not subject to federal rate regulation and are not permitted to file tariffs with the Commission."); *In the Matter of Regionet Wireless License, LLC,* 15 FCC Rcd. 16119, ¶ **3** ("The CMRS marketplace . . . is substantially less regulated and more competitive than most telecommunications markets. The competitive nature of the CMRS market is due, in part, to the Commission's willingness to evaluate and, when appropriate, forbear from enforcing regulations or provisions of the Communications Act . . . that could stifle competition."); *Local Competition Order* ¶ 1004 ("We are not persuaded by those arguing that CMRS providers should be treated as LECs, and decline at this time to treat CMRS providers as LECs.").

[41] There is no principled justification for treating LEC-CMRS compensation any differently than LEC-LEC compensation. *See Notice* ¶ 92. This is because, just as in the LEC-LEC context, permitting CMRS providers to receive any additional compensation would give both carriers and end users incorrect incentives. Established forward-looking, pricing principles should guide the calculation of intercarrier compensation to CMRS providers, just as they do for compensation due other carriers. To the extent that CMRS providers incur additional costs, relative to other carriers, due to the nature of their technology, the excess costs should be borne by the called
(continued. . .)

VII. THE CURRENT RULES REGARDING INTERCONNECTION BEST PROMOTE EFFICIENCY AND COMPETITIVE NEUTRALITY.

The *Notice* seeks comment on the efficiency of a number of existing rules governing the specific terms and conditions of interconnection, In particular, the *Notice* asks commenters to address (1) the rule that competitive carriers may determine their points of interconnection with incumbent carriers' networks; (2) the widespread practice of both competitive and incumbent carriers of assigning "virtual central office codes" codes associated with a local calling area to customers located outside that local calling area; **(3)** the widespread practice of indirect interconnection by competitive LECs by paying incumbent LECs to deliver their "transiting" traffic to each other; and (4) the "tandem symmetry" rule which permits a competitive carrier to charge the "tandem" switching rate when it terminates calls from a switch that serves a geographic area comparable to an incumbent's tandem switch. *See Notice* ¶¶ 71-72, 105-07, 112-15. As discussed below, each of these issues is critically important to establishing viable local competition. And in each case, the existing rule or practice better promotes efficiency and competitive neutrality than proposed alternatives.

Point Of Interconnection. Currently, "an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnection at a single POI per LATA." *Notice* ¶ 112. The Commission's existing "rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such [ILEC]." *Id* The *Notice* asks for comments on the related questions of whether it should retain its existing single POI per LATA

(. . . continued)
parties that enjoy the mobility benefits provided by these additional expenditures – which, indeed, is the way that the CMRS market currently operates.

rule and whether it should amend its existing rules governing how the costs of interconnection are to be ''allocated'' in the event that a competitive LEC picks a POI outside an incumbent LEC's "local calling area." ***Id.*** ¶¶ 72, 112-14.

The existing regime flows directly from the text of the Act. Section 251(c)(2) unambiguously imposes on incumbent LECs the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . . at ***any technicallyfeasible point with the carrier's network."*** 47 **U.S.C.**§ 251(c)(2) (emphasis added). Thus, the Act expressly mandates that competitive LECs be permitted to interconnect at "any technically feasible" location within the incumbent's network, without regard to whether that location is within an incumbent LEC's arbitrarily determined "local calling area."

Further, Section 251(b)(5) requires that a LEC has a duty to "establish reciprocal compensation arrangements for transport and termination of telecommunications.'' This compensation must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and must be a "reasonable approximation of the additional costs of ***terminating*** such calls." ***Id.*** § 252(d)(2)(A)(i), (ii) (emphasis added). Read together, these provisions establish that the POI marks the point at which the originating network must begin to pay reciprocal compensation to the terminating network, and that this compensation cannot exceed the "additional" costs the ***terminating*** carrier incurs in transporting and terminating traffic from the POI to the end user. Thus, the Act clearly precludes the incumbent LECs' position that they should receive greater compensation for "distant" POIs – ***e.g.***, reimbursement for costs they incur to deliver calls that they ***originate*** to a distant POI.

The existing rules are also efficient. Although competitive LECs get to choose the POI (subject to technical feasibility), the competitive carrier must internalize all costs its interconnection point decisions cause in connection with the calls its customers originate and the incumbent must terminate. *See Ordover-Willig* ¶¶ 70-74. To the extent a competitive LEC serves customers that are distant from the POI, it would have to bear the costs of transporting every call made by one of these customers to the POI. At the same time, the existing rules require the competitive LEC to pay the incumbent LEC for transport and termination from the POI to the incumbent central office serving the called party customer of the incumbent. To the extent such charges are properly set at the forward-looking, economic cost of transporting the calls, the incumbent is appropriately compensated, and the competitive carrier bears the costs of the additional transportation.

At the same time, the existing rules prevent incumbents from exploiting their enormous scale economies to preclude competitive entry. *See id.* ¶¶ 77-80. Even short of outright denials of interconnection, incumbent LECs can raise entry barriers by insisting that competing providers interconnect at multiple, inconvenient points (such as an incumbent LEC's central office in each local calling area).

The Commission expressly recognized these points in its *Local **Competition** Order*. There, it explained that:

> Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

Local Competition Order ¶ 209.

It is important to recognize, however, that the efficiency of the existing POI rule is entirely independent of the choice between CPNP and B&K. *See Ordover-Willig* ¶ **71.** If the rule is B&K, the terminating carrier receives (and the originating carrier pays) no intercarrier compensation, regardless of actual expenditures. If the rule is CPNP, the terminating carrier receives (and the originating carrier pays) forward-looking cost-based compensation, again regardless of actual expenditures. Thus, the choice between B&K and CPNP has no effect on either carrier's incentives to minimize its own costs. That is not to say that both (or, indeed, either) of the carriers would necessarily have the incentive to choose a POI in the most efficient location – *i.e.*, the location that minimizes the carriers' *combined* costs. **As** noted above, incumbent LECs have strong incentives to establish inefficient interconnection points to raise their potential rivals' costs and deter competitive entry. The point is simply that the choice of B&K over CPNP (or vice versa) would have no impact on those incentives. *See Local Competition Order* ¶ 1086 ("compensation rule gives the competing carriers correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs").

Nonetheless, the incumbent LECs seek to use this proceeding as an opportunity to amend the Commission's existing interconnection rules in a way that would further strengthen their competitive advantage. Several incumbents complain that some competitive LECs have, in some areas, chosen a single POI for an area larger than the incumbent's existing local calling area. *See Notice* ¶ 112.

Typically, when a competitive LEC initially enters a market, it deploys a single switch to serve a market and establishes a single POI with the incumbent near the focus of its initial entry – usually more urban areas. When it seeks to expand to surrounding communities, the most efficient option for the competitive LEC will often be to continue to use its initial POI, at least until its volume of customers and traffic in the surrounding areas will support another POI.

Further, as Professors Ordover and Willig explain, the interaction between the location of the POI and the costs a competitive LEC must bear provides the competitive LEC with strong incentives, once its volume of distant customers increases sufficiently, to establish an additional POI or POIs closer to the more distant communities. *Ordover-Willig* ¶¶ 73-74. In any case, when the traffic being transported to and from distant customers rises to significant levels, the competitive LEC can be expected to reconsider its single POI configuration, as AT&T does today under its current practices.

In all events, the existing rules are clearly superior to the alternatives proposed in this proceeding. The incumbents argue that competitive LEC should either be required to establish POIs at an incumbent's central office in the local calling area or to bear all of the costs for transport outside the local calling area to a "distant" single POI. *Notice* ¶ 112. As Professors Ordover and Willig explain (¶¶ 77-80), such a regime would clearly stifle competitive entry (and, as noted above, would also be unlawful). Clearly, if this rule were adopted, it would largely foreclose the ability of competitive LECs to compete on the merits of their network architectures and service offerings.

At bottom, the incumbent LECs' argument is premised on a logical fallacy. *Id.* ¶ 79. The incumbents treat their networks as establishing the efficiency "baseline" and claim that because competitive LECs employ a different architecture (one which uses fewer switches and longer loops), competitive LECs "cause" increased transportation costs. But as a matter of logic, it is equally true that the differences are "caused" by the incumbent LECs, because they chose to design their local networks differently than competitive LEC networks. In actuality, neither network should be viewed as the "baseline." Rather, it is the interconnection of *both* networks to one another that creates additional *costs* that neither would bear if interconnection were not required.

Nor would it be remotely efficient for the Commission to choose (via regulation) other point(s) of interconnection. There is simply no one-size-fits all solution to interconnection point decisions. Interconnection points that may be efficient in a particular area for carriers with certain volumes of traffic may not be efficient in other areas or at other volumes of traffic. The existing rule recognizes this by allowing competitive LECs to tailor point of interconnection decisions to local conditions but requiring them to bear the economic consequences of those decisions.

Virtual Central Office Codes. The *Notice* also seeks comment on the incumbent LECs' requests to limit use of "virtual" central office codes ("NXXs"). Virtual NXX codes are "central office codes that correspond with a particular geographic area that are assigned to a customer located in different geographic area." *Notice* ¶ 115 n.188. The incumbent LECs contend that in certain situations a "toll" call, and not a "local" call, occurs when an incumbent LEC customer calls a competitive LEC customer with a virtual NXX code. ***See*** *Ordover-Willig* ¶ 81. The incumbent LECs maintain that the competitive LEC should have to pay originating access and should not be paid reciprocal compensation, for such calls.

Contrary to the incumbent LECs' claims that new entrants are using virtual NXX codes to engage in access "arbitrage," there are sound business reasons for using virtual NXX codes. **A** customer with a virtual NXX code can send and receive calls in the same way as any other customer that resides in that local calling area. This is particularly valuable for consumers that receive calls from a diverse geographic region that may lie outside the legacy local calling area, such as taxi dispatch services, radio station talk shows, and ISPs. Virtual NXX codes, therefore, are a tool which permit competitive LECs to offer a comparable service to the incumbent's FX service at a lower cost than the incumbent currently offers such services.[42]

The incumbent LECs' arguments are foreclosed by principles of competitive neutrality and non-discrimination. ***Id.* ¶ 85.** By basing the jurisdiction of a call on the NPA-NXX of the calling and called numbers, incumbent LECs would pay reciprocal compensation when their customers call a competitive LEC customer with the same NPA-NXX code and *vice-versa.* That treats both carriers equally because both pay cost-based compensation when one of their subscribers places a call. In contrast, under the incumbent LECs' proposal, competitive LECs are forced to pay above-cost originating access charges. And at the same time, incumbent LECs would avoid paying competitive LECs for the costs of terminating traffic originated by an incumbent LEC customer even though those costs are caused by the incumbent LEC customer. *Compare with* Order Ruling on Objections and Requiring the Filing of Complete Agreement, Docket No. P-474, Sub 10 (N.C. PUC Aug. 2, 2001) (rejecting these incumbent arguments and holding that calls originated by incumbent LEC to "foreign exchange ("FX") customers are to be considered local and, therefore, subject to reciprocal compensation").

In this regard, it is important to emphasize that the incumbents' proposals would deprive competitive LECs of a means of differentiating their services from incumbent services.

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[42] Moreover, such serving arrangements do not impose any greater costs on the ILECs that originate traffic to such numbers than would be imposed if the terminating location were physically located in the rate center associated with the NXX code – in either case, the ILEC would be responsible for delivering the traffic to the same POI, and the CLEC would be responsible for the entire incremental cost of delivering the traffic to its customer location.

Ordover-Willig ¶ **86. As** discussed above, competitive LECs today generally use a single layer architecture which employs fewer switches and longer loops than incumbent two layer networks. The incumbent LECs' proposal would also choke off this form of competition by effectively requiring competitive LECs to pay exchange access for such traffic, thereby depriving competitive LECs of the ability to take full advantage of the flexibility inherent in their network architecture.

The Commission should impose no restrictions on the use of virtual NXX codes, and should not allow incumbent LECs to assess originating access charges when their subscribers call competitive LEC subscribers that have virtual NXX codes. Rather, the Commission's goal should be to promote, not discourage, innovative network architectures and service arrangements that allow competitors to differentiate their services in the marketplace.

Transiting Traffic. The *Notice* also seeks comment on "transiting" traffic. *Notice* ¶ 71. Generally speaking, transiting occurs when a competitive LEC uses an incumbent LEC's facilities to transport traffic to other carriers (including other incumbent LECs, other competitive LECs, and CMRS providers). This allows a competitive LEC to interconnect with other carriers indirectly, *see* **47** U.S.C. § 251(a), and to avoid having to incur the unnecessary costs of constructing dedicated facilities necessary to link their networks directly. *Ordover-Willig* ¶ **87**. These efficiencies are particularly significant in those instances where the competitive LEC and the other carrier do not exchange significant amounts of traffic. *Id.* ¶¶ **86-87-88.**

The Commission should confirm that incumbent LECs are required to transit competitive LEC traffic, at rates not in excess of TELRIC prices. **As** noted, transiting lowers **barriers** to competitive local phone services by allowing competitive LECs to forego the expense of building the facilities that would be necessary for the direct physical linking of their networks. And because incumbent LECs are fully compensated for transiting traffic, there can be no argument that incumbent LECs are being forced to subsidize competitive entry. ***Id.*** ¶ 88.[43]

Tandem Rate Symmetry. The ***Notice*** seeks comment on whether the Commission should retain its existing rule that the incumbent LEC's tandem interconnection rate should serve as a presumptive proxy for competitive LECs who use new switch technologies "to serve a geographic area comparable to that served by the ILEC's tandem switch." ***Notice*** ¶ 102. ***See also*** Letter from T. Sugrue & D. Attwood, FCC, to C. McKee, Sprint (May 9, 2000) (tandem switching rate applies when competitive LEC serves "a geographic area comparable to the incumbent LEC's tandem switch' even if it does not employ a tandem switch), The incumbent LECs argue against the current rule on the ground that competitive LECs have lower costs than incumbent LECs because they employ more modern switching equipment that can serve with a single switch a geographic region that the incumbent LEC legacy network serves with both end office and tandem switches. ***Notice*** ¶ 103.

Competitive neutrality precludes any such an approach ***Ordover-Willig*** ¶ 91. If the incumbent LECs' "heads-we-win, tails-you-lose" standard were granted, incumbent LECs would earn much higher reciprocal compensation on traffic they terminate than competitive

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[43] **As** Qwest notes, transiting is incompatible with a B&K regime. ***Notice*** ¶ 71. Under B&K, each carrier is supposed to recover its costs from its end-users. But when providing transiting services, the "carrier in the middle" has no end user customer. Nonetheless, any restrictions on transiting would be inconsistent with the incumbent LECs' obligation to provide nondiscriminatory interconnection and to unbundled access to shared transport. ***See id.*** §§ 251(c)(2)(D), (c)(3). ***See also*** 47 U.S.C. § 251(a) (permitting "indirect" interconnection). Thus, should the Commission adopt B&K as the general rule to govern intercarrier compensation, it should reaffirm that incumbent LECs are required to provide transiting and carve out an exception to B&K in this context to allow for cost-based intercarrier payments to LECs that provide transiting services for other LECs.

LECs that provide the exact same service in the exact same area. This would tilt the competitive playing field sharply in favor of incumbent LECs and require competitive LECs to subsidize their competitors. That would be wrong-headed under any circumstances, but it is particularly so here, in light of the nascent nature of the competitive LEC industry coupled with the enormous advantages that incumbent LECs already enjoy.

As Professors Ordover and Willig explain, properly set forward-looking switching rates should be based on the costs of the most efficient network architecture with currently available technology. *Ordover-Willig* ¶ 91. To the extent that it is today more efficient to employ, as competitive LECs generally do, a "single layer" network which does not use tandem switches, the incumbent LEC should not, as a matter of economics, be allowed to charge more simply because its own legacy network does include more tandems. Put simply, by arguing that competitive LECs have lower costs, the incumbent LECs implicitly concede that their architecture is not efficient and should not be the basis for properly set intercarrier rates (or rates for access to network elements).

AT&T recognizes, of course, that the Commission's "scorched node" approach mandates, to some extent, deviation from the principle that forward-looking costs are to be based on the most efficient network design. *See Local Competition Order* ¶ 685. The Commission's forward-looking pricing regulations permit interconnection rates to reflect use of tandem switches even in those cases where this architecture is inefficient relative to a single layer architecture. Thus, the issue is whether an incumbent LEC's tandem switching rates should be calculated by one pricing standard and a competitive LEC's by another. Fundamental principles of competitive neutrality demand that the same standard apply to both carriers. *Ordover-Willig* ¶ 91.[44]

More broadly, the *Notice* asks whether forward-looking costs should serve as a presumptive proxy for competitive LEC costs. *Notice* ¶ 106. The answer is again yes for all the reasons discussed above. To the extent that incumbent LEC rates are being set above long run incremental costs because of the Commission's decision to adopt a "scorched node" rather than "scorched earth" forward-looking pricing approach, principles of competitive neutrality demand that competitive LEC reciprocal compensation rates be set using the same methodology.

CONCLUSION

In conclusion, the Commission should: (a) adopt a truly unified intercarrier compensation scheme with termination and transport rates based on forward-looking, economic costs; (b) reaffirm that competitive carriers should determine the point of interconnection between their networks and incumbent LEC networks; (c) make clear that the jurisdiction of a call is determined by the **NPA-NXX** code of the calling and called numbers and not the legacy incumbent local calling areas; (d) reaffirm the widespread practice of "transiting" in which competitive LECs indirectly interconnect by paying incumbent LECs to deliver their "transiting" traffic to each other; and (e) reaffirm the "tandem symmetry" rule which permits a competitive

[44] If the Commission were to abandon the tandem rate symmetry rule, it would be imperative that the Commission modify its rules to end a competitive LEC's transport obligations at the incumbent's tandem switch so that each interconnecting carrier had financial obligations to deliver its traffic to the same relative point on the other party's network (*i.e.*, the competitive LEC's switch and the incumbent LEC's tandem switch).

carrier to charge the "tandem" switching rate when it terminates calls from a switch in a "single-layer" switching architecture that serves a geographic area comparable to a tandem switch in the incumbent's "two-layer" switching architecture

Respectfully Submitted,

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August 21,2001

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2001, I caused true and correct copies of the forgoing Comments of AT&T Corp. on Intercarrier Compensation to the to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: August 21st , 2001
Washington, D.C

Patricia Bunyasi

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